

REMARKS

Reconsideration of the above-identified patent application as amended herein is respectfully requested. Claims 1-9, 22-34 and 39-42 are pending in the subject application and have been examined on the merits. Claims 1, 39 and 41 have been amended to make minor typographical or grammatical corrections. No new matter has been added.

In the Office Action, the claims have been rejected as follows:

- (a) Claims 1-5, 9, 22-23, 32, 39 and 41 were rejected under 35 U.S.C. § 102(b) as being anticipated Griffiths et al. (U.S. Patent No. 6,317,623, hereinafter “Griffiths”);
- (b) Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Griffiths in view of Trombely et al. (U.S. Patent No. 6,575,930, hereinafter “Trombely”);
- (c) Claims 24-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Griffith in view of Schneider et al. (U.S. Patent No. 5,686,060, hereinafter “Schneider”);
- (d) Claims 28-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Griffiths and Schneider and further in view of Unger et al. (U.S. Patent No. 6,521,211, hereinafter “Unger I”);
- (e) Claim 33 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Griffiths, Schneider and Unger I of Unger et al. (U.S. Patent No. 5,334,381, hereinafter “Unger II”);
- (f) Claim 34 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Griffiths, Schneider, Unger I, Unger II and

further in view of Minchey et al. (U.S. Patent No. 5,415,867, hereinafter “Minchey”); and

- (g) Claims 40 and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Griffiths in view of Unger II.

In addition, claims 1-9, 22-34 and 39-42 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 6,726,650.

Applicants respectfully traverse these rejections. For the reasons set forth below, it is believed that the claims are not anticipated or rendered obvious by the cited prior art.

A. Griffiths Is Not Prior Art To Applicants’ Claim

A reference can only be used as a 35 U.S.C. § 102(b) reference if its filing date is more than one (1) year prior to the effective filing date of the application to which the rejection is applied to. 35 U.S.C. § 102(b); MPEP § 706.02.

The present application is a divisional of application U.S.S.N. 09/204,067, now U.S. Patent No. 6,726,650, filed on December 3, 1998, which claims benefit to and priority from European application No. 97810947.8, filed on December 4, 1997 (Inventors Declaration executed on or about April 29, 2003 located in IFW at page 12 of 16 of the “Oath or Declaration” filed September 16, 2005; Remarks of the Preliminary Amendment executed on or about May 22, 2000 located in IFW at page 1 of 43 of the “Miscellaneous Incoming Letters” filed May 22, 2000; and Request for Filing an Application under Title 53(b) executed on or about May 22, 2000 located in IFW at page 4 of 43 of the “Miscellaneous Incoming Letters” filed May 22, 2000). As such, the effective filing date of the present application is December 4, 1997.

On the other hand, Griffiths' effective filing date is March 12, 1999, which is well after Applicants' December 4, 1997 effective filing date. As such, Griffiths is not prior art to Applicants' claims and withdrawal of the rejection of the claims under 35 U.S.C. § 102(b) as anticipated by Griffiths is respectfully requested.

B. Applicants' Claims Are Non-Obvious Over The Cited Prior Art

As set forth in the preceding section, Griffiths cannot be used as an anticipatory reference under 35 U.S.C. § 102(b). Thus, Griffiths cannot be used to support a rejection under 35 U.S.C. § 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981).

Accordingly, withdrawal of the rejection of all of the claims for being unpatentable over Griffiths in combination with the cited prior art under 35 U.S.C. § 103(a) is respectfully requested.

C. No Terminal Disclaimer Is Needed

The present application is a divisional of the parent U.S.S.N. 09/204,067, now Patent No. 6,726,650 (the '067 Application). In the parent '067 Application, a Restriction Requirement was issued on April 21, 2000, in which claims were divided into Group I (drawn to methods of administering) and Group II (drawn to an injector system). The Group I claims were prosecuted in the parent '067 Application. The Group II claims were prosecuted in the instant divisional application.

As such, it would be inappropriate to maintain the rejection of claims 1-9, 22-34 and 39-42 on the ground of non-statutory obviousness-type double patenting over claims 1-31 of the parent '067 Application. 35 U.S.C. §121, MPEP § 804.

Accordingly, withdrawal of the rejection of claims 1-9, 22-34 and 39-42 on this basis is respectfully requested.

D. Conclusion

In light of the foregoing, the application is now believed to be in proper condition for allowance and a Notice to that effect is respectfully requested. If this *Amendment and Response* does not otherwise result in the issue of such Notice, the Examiner is respectfully invited to contact the Applicants' undersigned counsel for an interview.

No extra fee is believed due. However, if any additional fees are necessary, the Director is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 50-0540.

Respectfully submitted,

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By: /Silvia Salvadori/
Silvia Salvadori, Reg. No. 48,265
Donald L. Rhoads, Reg. No. 34,705
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100 Tel
(212) 715-8000 Fax